UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FURMINATOR, INC.,)
)
Plaintiff,)
)
vs.)   Case No. 4:08CV00367 ERW
)
KIM LAUBE & CO., INC.,)
)
Defendant.)

MEMORANDUM AND ORDER

This matter comes before the Court on Defendant's oral motion for clarification on the December 21, 2009 Order imposing sanctions against Defendant. This Court held a status conference via telephone on February 17, 2010. During that conference, counsel for Defendant expressed some confusion regarding this Court's December 21, 2009 Order, which, in part, imposed sanctions against Defendant. This Order will attempt to resolve counsel's confusion.

In the December 21, 2009 Order, this Court denied Plaintiff's Motion to Strike and Objections to the Testimony and Declaration of Liston Pratt, Exhibit F to the July 2, 2009 Declaration of Kim Laube [doc. #243]. The Court also imposed the following sanctions on Defendant: all testimony of Kim Laube was stricken; all documents and tools that Mr. Laube relied on were stricken; all expert testimony that relies on Mr. Laube's testimony, documents, or tools was excluded; and Defendant was prohibited from otherwise relying on these materials. To the extent that Defendant believes that these two rulings conflict with one another, the Court offers the following guidance. In making the December 21, 2009 Order, the Court simply ruled on the issues that were before it at the time, and the Motion to Strike was addressed before the

Court determined that sanctions should be imposed. To the extent that the Declaration of Liston

Pratt falls within one of the categories of evidence that is excluded due to sanctions, that

Declaration is not admissible. This may mean that part or all of Mr. Pratt's Declaration is

excluded from use in this case.

Accordingly,

IT IS HEREBY ORDERED that the Declaration of Liston Pratt is excluded to the

extent set forth above.

Dated this <u>18th</u> Day of <u>February</u>, 2010.

E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE